

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:06cr35**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
BARBARA VIVIAN BAILEY,)	
)	
Defendant.)	
_____)	

THIS CAUSE coming on to be heard and being heard before the undersigned upon a violation report filed in the above entitled cause on June 22, 2007 by the United States Probation Office. In the violation report the United States Probation Office alleged that the defendant had violated terms and conditions of her pretrial release. At the call of this matter on for hearing it appeared that the defendant was present with her attorney, James Rice Jr., and that the Government was present through Assistant United States Attorney, Corey Ellis, and from the evidence offered and from the statements of the Assistant United States Attorney and the attorney for the defendant, and the records in this cause, the court makes the following findings.

Findings: At the call of the matter, the defendant, by and through her attorney, admitted the allegations contained in the violation report filed on June 22, 2007. The Government introduced, without objection, the violation report into evidence. The defendant was charged, in a bill of indictment filed on December 5, 2006 with conspiracy to distribute methamphetamine. On December 21, 2006, a hearing was held in regard to the detention

of the defendant. On that date, the undersigned entered an order releasing the defendant on a \$25,000.00 unsecured bond. The undersigned further set conditions of release which included the following:

- (1) That the defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

On June 22, 2007, a search was performed at Ms. Bailey's residence and at that time, drug paraphernalia was found. The defendant was placed under arrest by the Cherokee County Sheriff's Office based upon allegations that the defendant had committed the offenses of misdemeanor possession of drug paraphernalia and felony maintaining a dwelling place for the purpose of keeping a controlled substance.

Discussion. 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer -----

- (1) finds that there is----
 - (A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or
 - (B) clear and convincing evidence that the person has violated any other condition of release; and
- (2) finds that ---
 - (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or
 - (B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.”

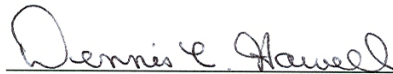
Based upon the evidence, the undersigned finds that there is probable cause to believe that the defendant committed a federal and state crime while on release. There is probable cause to believe the defendant had drug paraphernalia in her possession which is a state misdemeanor and the defendant also committed the offense of felony maintaining a dwelling place for the purpose of keeping a controlled substance. Due to the fact that there is probable cause to believe that the defendant committed a state felony, a rebuttable presumption arises, pursuant to 18 U.S.C. § 3148, that no condition or combination of conditions would assure that the defendant would not pose a danger to the safety of any other person or the community.

Due to the findings made above and further considering the presumption that has been created and also considering the factors as set forth under 18 U.S.C. § 3142(g), it appears there is no condition or combination of conditions of release that will assure that the defendant will not pose a danger to the safety of any other person or the community. It is the opinion of the undersigned that based upon the defendant's actions, that it is unlikely that the defendant will abide by any condition or combination of conditions of release. As a result of the above referenced findings, the undersigned has determined to enter an order of revocation revoking the unsecured bond and the terms of pretrial release previously issued in this matter and entering an order detaining the defendant.

ORDER

IT IS, THEREFORE, **ORDERED** that the unsecured bond and terms and conditions of pretrial release entered in this matter are hereby **REVOKED** and it is **ORDERED** that the defendant be detained pending further proceedings in this matter.

Signed: August 21, 2007



Dennis L. Howell
United States Magistrate Judge

